

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY,)
)
Plaintiff,)
)
v.)
) Civil Action No. 2:18-cv-01058
RYAN ZINKE, in his official capacity as)
Secretary of the United States Department)
of the Interior, et al.,)
)
Defendants.)
)

**DEFENDANTS' UNOPPOSED MOTION TO STAY FURTHER PROCEEDINGS
(EXPEDITED REVIEW SOUGHT)**

Defendants Ryan Zinke, in his official capacity as Secretary of the United States Department of the Interior, and the United States Fish and Wildlife Service (“FWS”) (collectively, “Defendants”) respectfully move this Court for an order staying further proceedings in this case until December 31, 2019, pending FWS’s submission to the Federal Register of proposed critical habitat designations for the Guyandotte River crayfish (*Cambarus veteranus*) and the Big Sandy crayfish (*Cambarus callainus*) by that date. As discussed *infra*, Defendants believe that such a stay would conserve the resources of the Court and the parties. Counsel for Plaintiff Center for Biological Diversity (“Center”) has indicated that the Center does not oppose the requested stay. Accordingly, Defendants submit as follows:

1. On April 7, 2016, the Guyandotte River crayfish was listed as endangered under the Endangered Species Act (“ESA”), and the Big Sandy crayfish listed as threatened under the ESA. *See* 81 Fed. Reg. 20,450 (Apr. 7, 2016).
2. On June 20, 2018, Plaintiff filed a complaint, alleging violations of the ESA, *see* 16 U.S.C. §§ 1531-44, and Administrative Procedure Act, *see* 5 U.S.C. §§ 701-06, in connection

with FWS's alleged failure to timely designate critical habitat for the Guyandotte River crayfish and the Big Sandy crayfish. *See Docket ("Dkt.") 1.*

3. The regional office with primary responsibility for these species (FWS's Region 5) is also responsible for several near-term actions for other species. Accounting for the competing demands on Region 5, FWS currently expects to submit to the Federal Register proposed critical habitat designations for the Guyandotte River crayfish and the Big Sandy crayfish no later than December 31, 2019.

4. A stay to allow FWS to continue its work would conserve the resources of the Court and the parties. Conversely, if this lawsuit proceeds, FWS will be required to divert personnel and other resources that would otherwise be directed to these proposed critical habitat designations to litigation-related tasks, such as compiling an administrative record and assisting in the preparation of briefing, and FWS's current timeline for completion of its proposed critical habitat designations would likely be delayed as a result.

5. In light of these circumstances, Defendants respectfully request that the Court stay further proceedings in this case until December 31, 2019, pending FWS's submission of proposed critical habitat designations for the Guyandotte River crayfish and the Big Sandy crayfish to the Federal Register by that date. The decision to stay proceedings rests within the sound discretion of this Court: "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936).

6. On September 19, 2018, undersigned counsel for Defendants contacted Plaintiff's counsel to determine whether the Center would oppose a stay, and Plaintiff's counsel has indicated that the Center does not oppose the requested stay.

NOW, THEREFORE, Defendants respectfully request that this Court enter an order as follows:

1. Further proceedings in this case are stayed through December 31, 2019.
2. Defendants shall inform the Court of FWS's submission to the Federal Register of proposed critical habitat designations for the Guyandotte River crayfish and the Big Sandy crayfish by filing a notice. Within 14 days of filing such a notice, the parties shall file a joint status report and a proposed schedule for further proceedings, if necessary.
3. If FWS becomes unable to submit the proposed critical habitat designations to the Federal Register by December 31, 2019, Defendants shall promptly confer with Plaintiff. If FWS does not submit the proposed critical habitat designations to the Federal Register by December 31, 2019, the stay will expire on January 1, 2020.

Dated: September 21, 2018

Respectfully submitted,

MICHAEL B. STUART
United States Attorney
FRED B. WESTFALL, JR.
Assistant United States Attorney
(WV Bar No. 3992)
Southern District of West Virginia
P.O. Box 1713
Charleston, WV 25326
Tel: (304) 345-2200
Fax: (304) 347-5443
E-mail: fred.westfall@usdoj.gov

JEFFREY H. WOOD
Acting Assistant Attorney General
SETH M. BARSKY
Section Chief
MEREDITH L. FLAX
Assistant Section Chief

/s/ H. Hubert Yang _____
H. HUBERT YANG
Trial Attorney (WV Bar No. 8953 (inactive);
DC Bar No. 491308)

United States Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 305-0209
Fax: (202) 305-0275
E-mail: hubert.yang@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2018, I electronically filed the foregoing Defendants' Unopposed Motion To Stay Further Proceedings and [Proposed] Order with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ H. Hubert Yang

H. HUBERT YANG
United States Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 305-0209
Fax: (202) 305-0275
E-mail: hubert.yang@usdoj.gov

Attorney for Defendants